

STATE: MINNESOTA

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- r) home care services to a recipient who is eligible for Medicare covered home care services (including hospice), if elected by the recipient, or any other insurance held by the recipient;
- s) services to other members of the recipient's household;
- t) any home care service included in the daily rate of the community-based residential facility where the recipient resides;
- u) personal care assistant services that are not ordered by the physician; or
- v) services not authorized by the commissioner or the commissioner's designee.

26. Personal care assistant services.

Personal care assistant services are provided by personal care provider organizations or by use of the PCA Choice option.

A. Personal care provider organizations

Personal care services provider qualifications:

- Personal care assistants must be employees of or under contract with a personal care provider organization within the service area. If there are not two personal care provider organizations within the service area, the Department may waive this requirement. If there is no personal care provider organization within the service area, the personal care assistant must be enrolled as a personal care assistant provider.
- If a recipient's diagnosis or condition changes, requiring a level of care beyond that which can be provided by a personal care provider, non-Medicare certified personal care providers must refer and document the referral of dual eligibles to Medicare providers (when Medicare is the appropriate payer).
- Effective July 1, 1996, personal care assistant means a person who:
 - a) is at least 18 years old, except for persons 16 to 18 years of age who participated in a related school-based job training program or have completed a certified home health aide competency evaluation;
 - b) is able to effectively communicate with the recipient and the personal care provider organization;
 - c) is able to and provides covered personal care assistant services according to the recipient's plan of care, responds appropriately to the recipient's needs, and reports changes in the recipient's conditions to the supervising

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qualified professional or physician. For the purposes of this item, "qualified professional" means a registered nurse or a mental health professional defined in item 6.d.A. of this attachment;

- d) is not a consumer of personal care assistant services; and
- e) is subject to criminal background checks and procedures specified in the state human services licensing act.

- Effective July 1, 1996, personal care provider organization means an entity enrolled to provide personal care assistant services under medical assistance that complies with the following:

- a) owners who have a five percent interest or more, and managerial officials are subject to a background study. This applies to currently enrolled personal care provider organizations and those entities seeking to enroll as a personal care provider organization. Effective November 10, 1997, an organization is barred from enrollment if an owner or managerial official of the organization has been convicted of a crime specified in the state human services licensing act, or a comparable crime in another jurisdiction, unless the owner or managerial official meets the reconsideration criteria specified in the state human services licensing act;
- b) the organization must maintain a surety bond and liability insurance throughout the duration of enrollment and provide proof thereof. The insurer must notify the Department of the cancellation or lapse of policy; and
- c) the organization must maintain documentation of personal care assistant services as specified in rule, as well as evidence of compliance with personal care assistant training requirements.

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B. PCA Choice option

Under this option, the recipient and qualified professional do not require professional delegation.

- The recipient or responsible party:
 - a) uses a PCA Choice provider, not a personal care provider organization. A PCA Choice provider assists the recipient to account for covered personal care assistant services. A PCA Choice provider is considered a joint employer of the qualified professional described in item A and the personal care assistant, and may not be related to the recipient, qualified professional, or personal care assistant. A PCA Choice provider or owner of the entity providing PCA Choice services must pass a criminal background check according to the state human services licensing act;
 - b) if a qualified professional is requested, uses a qualified professional for help in developing and revising a service plan to meet the recipient's needs, as assessed by the public health nurse;
 - c) supervises the personal care assistant if the recipient or responsible party does not want a qualified professional to supervise the personal care assistant;
 - d) if the recipient or responsible party wants a qualified professional to supervise the personal care assistant, verifies and documents the credentials of the qualified professional, and then recruits, hires and, if necessary, terminates the qualified professional;
 - e) recruits, hires and, if necessary, terminates the personal care assistant;

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- f) with assistance from the qualified professional, orients trains the personal care assistant;
- g) with assistance as needed from the qualified professional or the recipient's physician, supervises and evaluates the personal care assistant;
- h) monitors and verifies in writing the number of hours worked by the qualified professional and the personal care assistant; and
- i) together with the PCA Choice provider, qualified professional, and personal care assistant, enters into a written agreement before services begin. The agreement must include:
 - 1) the duties of the recipient, PCA Choice provider, qualified professional, and personal care assistant;
 - 2) the salary and benefits for the qualified professional and personal care assistant;
 - 3) the administrative fee of the PCA Choice provider and services paid for with that fee, including background checks;
 - 4) procedures to respond to billing or payment complaints; and
 - 5) procedures for hiring and terminating the qualified professional and personal care assistant.

The PCA Choice provider:

- a) enrolls in medical assistance;
- b) requests and secures background checks on qualified professionals and personal care assistants according to the state human services licensing act;

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- c) bills for personal care assistant and qualified professional services;
- d) pays the qualified professional and personal care assistant based on actual hours of services provided;
- e) withholds and pays all applicable federal and state taxes;
- f) makes the arrangements and pays unemployment insurance, taxes, workers' compensation, liability insurance, and other benefits, if any;
- g) verifies and keeps records of hours worked by the qualified professional and personal care assistant; and
- h) ensures arm's length transactions with the recipient and personal care assistant.

At a minimum, qualified professionals visit the recipient in the recipient's home at least once every year. Qualified professionals report to the appropriate authorities any suspected abuse, neglect, or financial exploitation of the recipient.

As part of the assessment and reassessment process in item 6.d.B. of this attachment, the following must be met to use, or continue to use, a PCA Choice provider:

- a) the recipient must be able to direct the recipient's own care, or the responsible party for the recipient must be readily available to direct the care of the personal care assistant;
- b) the recipient or responsible party must be knowledgeable of the health care needs of the recipient and be able to effectively communicate those needs;
- c) effective August 1, 2002, the recipient cannot receive who receives shared personal care assistant services (shared services) must use the same PCA Choice provider; and

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- d) a service update cannot be used in lieu of an annual reassessment.

Authorization to use the PCA Choice option will be denied, revoked, or suspended if:

- a) the public health nurse or qualified professional determines that use of this option jeopardizes the recipient's health and safety;
- b) the parties do not comply with the written agreement; or
- c) the use of the option results in abusive or fraudulent billing.

The recipient or responsible party may appeal this decision. A denial, revocation or suspension will not affect the recipient's authorized level of personal care assistant services.

Amount, duration and scope of personal care assistant services:

- Department prior authorization is required for all personal care assistant services and supervision, if requested by the recipient or responsible party. Prior authorization is based on the physician's orders; the recipient's needs, diagnosis, and condition; an assessment of the recipient; primary payer coverage determination information as required; the service plan; and cost effectiveness when compared to other care options. The Department may authorize up to the following amounts of personal care assistant service:
 - a) up to 2 times the average number of direct care hours provided in nursing facilities for the recipient's comparable case mix level;
 - b) up to 3 times the average number of direct care hours provided in nursing facilities for recipients with complex medical needs, or who are dependent in at least seven activities of daily living and need either physical assistance with eating or have a neurological diagnosis;

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- c) up to 60 percent of the average payment rate for care provided in a regional treatment center for recipients who exhibit, or that without supervision, observation, or redirection would exhibit, one or more of the following behaviors:
 - 1) self-injury;
 - 2) physical injury to others; or
 - 3) destruction of property;
 - d) up to the amount medical assistance would pay for care provided in a regional treatment center for recipients referred by a regional treatment center preadmission evaluation team; or
 - e) up to the amount medical assistance would pay for facility care for recipients referred by a long term care consultation team; and
 - f) a reasonable amount of time for the provision of supervision of personal care assistant services, if a qualified professional is requested by the recipient or responsible party.
- Department prior authorization is also required if more than two reassessments to determine a recipient's need for personal care assistant services are needed during a calendar year.
 - Personal care assistant services must be prescribed by a physician. The service plan must be reviewed and revised as medically necessary at least once every 365 days.
 - For personal care assistant services
 - a) effective July 1, 1996, the amount and type of service authorized based upon the assessment and service plan will follow the recipient if the recipient chooses to change providers;
 - b) effective July 1, 1996, if the recipient's medical need changes, the recipient's provider may request a change in service authorization; and

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- c) as of July 1, 1998, in order to continue to receive personal care assistant services after the first year, the recipient or the responsible party, in conjunction with the public health nurse, may complete a service update on forms developed by the Department. If a service update is completed, it substitutes for the annual reassessment described in item 6.d.B. of this attachment.
- All personal care assistant services must be supervised as described in this item. A reasonable amount of time for the provision of supervision shall be authorized.
 - Personal care assistant services are provided for recipients who live in their own home if their own home is not a hospital, nursing facility, intermediate care facility for the mentally retarded (ICF/MR), institution for mental disease, or licensed health care facility.
 - Recipients may use approved units of service outside the home when normal life activities take them outside the home. Effective July 1, 1996, total hours for personal care assistant services, whether performed inside or outside a recipient's home, cannot exceed that which is otherwise allowed for personal care assistant services in an in-home setting.
 - Recipients may receive shared personal care assistant services (shared services), defined as providing personal care assistant services by a personal care assistant to two or three recipients at the same time and in the same setting. For purposes of this item, "setting" means the home or foster care home of one of the recipients, a child care program in which all recipients served by one personal care assistant are participating, which has state licensure or is operated by a local school district or private school, or outside the home or foster care home when normal life activities take recipients outside the home or foster care home. The provider must offer the recipient or responsible party the option of shared services; if accepted, the recipient or responsible party may withdraw participation in shared services at any time.

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If supervision of a personal care assistant by a qualified professional is requested by any one of the recipients or responsible parties, the supervision duties of the qualified professional are limited to only those recipients who requested the supervision.

In addition to the documentation requirements for personal care provider service records in state rule, a personal care provider must meet documentation requirements for shared services and must document the following in the health service record for each recipient sharing services:

- a) permission by the recipient or responsible party for the maximum number of shared services hours per week chosen by the recipient;
- b) permission by the recipient or responsible party for personal care assistant services provided outside the recipient's home;
- c) permission by the recipient or responsible party for others to receive shared services in the recipient's home;
- d) revocation by the recipient or responsible party of the shared service authorization, or the shared service to be provided to others in the recipient's home, or the shared services to be provided outside the recipient's home;
- e) if a qualified professional is requested by any one of the recipients or responsible parties, supervision of the shared personal care assistant services by the qualified professional, including the date, time of day, number of hours spent supervising the provision of shared services, whether the supervision was face-to-face or another method of supervision, changes in the recipient's condition, and shared services scheduling issues and recommendations;

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- f) if a qualified professional is requested by any one of the recipients or responsible parties, documentation by the qualified professional of telephone calls or other discussions with the personal care assistant regarding services being provided to the recipient; and
- g) daily documentation of the shared services provided by each identified personal care assistant including:
 - 1) the names of each recipient receiving share services together;
 - 2) the setting for the shared services, including the starting and ending times that the recipient received shared services; and
 - 3) notes by the personal care assistant regarding changes in the recipient's condition, problems that may arise from the sharing of services, scheduling issues, care issues, and other notes as required by the qualified professional, if a qualified professional is requested by any one of the recipients or responsible parties.

In order to receive shared services:

- a) the recipient or responsible party, in conjunction with the county public health nurse, must determine:
 - 1) whether shared services is an appropriate option based on the individual needs and preferences of the recipient; and
 - 2) the amount of shared services allocated as part of the overall authorization of personal care assistant services;
- b) the recipient or responsible party, in conjunction with the supervising qualified professional (if a qualified professional is requested by any one of the recipients or responsible parties), must arrange the setting and grouping of shared services based on

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the individual needs and preferences of the recipients;

- c) the recipient or responsible party, and the supervising qualified professional (if a qualified professional is requested by any one of the recipients or responsible parties), must consider and document in the recipient's health service record:
 - 1) the additional qualifications needed by the personal care assistant to provide care to several recipients in the same setting;
 - 2) the additional training and supervision needed by the personal care assistant to ensure that the needs of the recipient are appropriately and safely met. If supervision by a qualified professional is requested by any one of the recipients or responsible parties, the provider must provide on-site supervision by a qualified professional within the first 14 days of shared services, and monthly thereafter;
 - 3) the setting in which the shared services will be provided;
 - 4) the ongoing monitoring and evaluation of the effectiveness and appropriateness of the service and process used to make changes in service or setting; and
 - 5) a contingency plan that accounts for absence of the recipient in a shared services setting due to illness or other circumstances and staffing contingencies.
- The following personal care assistant services are covered under medical assistance as personal care assistant services:
 - a) services and supports that assist in accomplishing activities of daily living. "Activities of daily living" include eating, toileting, grooming,

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 dressing, bathing, transferring, mobility, and positioning;

- b) services and supports that assist in accomplishing instrumental activities of daily living.

 "Instrumental activities of daily living" include meal planning and preparation, managing finances, shopping for food, clothing and other essential items, performing essential household chores, communication by telephone and other media, and participating in the community;

- c) services and supports that assist in health-related functions through hands-on assistance, supervision, and cuing. "Health-related functions" means services that can be delegated or assigned by a licensed health care professional to be performed by a personal care assistant. These are provided under the supervision of a qualified professional or the direction of the recipient's physician; and

- d) redirection and intervention for behavior including observation and monitoring.

- The following services are **not covered** under medical assistance as personal care assistant services:

- a) health services provided and billed by a provider who is not an enrolled personal care provider;

- b) personal care assistant services that are provided by the recipient's spouse, legal guardian, parent of a recipient under age 18, or the recipient's responsible party;

- c) personal care assistant services that are provided by the recipient's adult child or sibling, or the adult recipient's parent, unless these relatives meet one of the hardship criteria, below, and receive a waiver from the Department. As of July 1, 2000, any of these relatives who are also guardians or conservators of adult recipients, when the

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guardians or conservators are not the owner of the recipient's personal care provider organization, are included in this list.

The hardship waiver criteria are:

- 1) the relative resigns from a part-time or full-time job to provide personal care for the recipient;
 - 2) the relative goes from a full-time job to a part-time job with less compensation to provide personal care for the recipient;
 - 3) the relative takes a leave of absence without pay to provide personal care for the recipient;
 - 4) the relative incurs substantial expenses by providing personal care for the recipient; or
 - 5) because of labor conditions, special language needs, or intermittent hours of care needed, the relative is needed in order to provide an adequate number of qualified personal care assistants to meet the medical needs of the recipient.
- d) effective July 1, 1996, services provided by a foster care provider of a recipient who cannot direct his or her own care, unless a county or state case manager visits the recipient as needed, but not less than every six months, to monitor the health and safety of the recipient and to ensure the goals of the care plan are met;
- e) services provided by the residential or program license holder in a residence for more than four persons;

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- f) services that are the responsibility of a residential or program license holder under the terms of a service agreement and administrative rules;
- g) sterile procedures;
- h) giving of injections of fluids into veins, muscles, or skin;
- i) homemaker services that are not an integral part of a personal care assistant service;
- j) home maintenance or chore services;
- l) personal care assistant services when the number of foster care residents is greater than four;
- m) personal care assistant services when other, more cost-effective, medically appropriate services are available;
- n) services not specified as covered under medical assistance as personal care assistant services;
- o) effective January 1, 1996, assessments by personal care provider organizations or by independently enrolled registered nurses;
- p) effective July 1, 1996, services when the responsible party is an employee of, or under contract with, or has any direct or indirect financial relationship with the personal care provider or personal care assistant, unless case management is provided (applies to foster care settings);
- q) effective January 1, 1996, personal care assistant services that are not in the service plan;